

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of)

Rulemaking to Amend Part 1 and)
Part 21 of the Commission's Rules)
to Redesignate the 27.5-29.5 GHz)
Frequency Band and to Establish)
Rules and Policies for Local)
Multipoint Distribution Service;)

Applications for Waiver of the)
Commission's Common Carrier Point-)

CC Docket No. 92-297

RM-7872; RM-7722

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Association for the Advancement of Colored People ("NAACP").

1. There is no doubt that LMDS is a point to multipoint service. By statute,¹ then, the Commission must implement a means of providing a significant preference to minority applicants² for this service in the event it licenses the service by lottery.

2. In its Comments, the NAACP identified a deficiency in current Commission policy fostering minority participation in ownership of mass media facilities. The NAACP documented the abysmal history of minority ownership of mass media facilities. It noted that at each turn, Congress, the Courts and the executive branch have endorsed the goal of expanded diversity in the media marketplace which underlies the minority preference policies the Commission currently employs. It commented, however, that as endorsed as these policies are, they are at best, unreliable.

3. NCLR agrees that there is a better way to ensure minority participation in ownership of mass media facilities. It supports the NAACP's proposal to set aside one block of LMDS frequencies as the least extreme measure which reasonably could be expected to accomplish the goal of increasing ethnic diversity of voices in the marketplace.

4. The minority population in the United States has remained relatively constant at twenty percent (20%) since 1978, when the

¹ See 47 U.S.C. Sec. 309.

² Section 309(i)(3)(C)(ii) of the Communications Act, as amended, defines minority group to include Blacks, Hispanics, American Indians, Alaska natives, Asians and Pacific Islanders. See 47 U.S.C. Sec. 309(i)(3)(C)(ii).

Commission first considered awarding preferences to encourage minority ownership in the mass media. In 1978, one percent of broadcast stations was minority controlled. Although, since that time, AM/FM/TV station totals have increased by fifty percent,³ only 2.8% of mass media facilities are currently minority controlled,⁴ down from 2.9% in 1990 and 1991. In addition, "these statistics fail to reflect the fact that, as late entrants who often have been able to obtain only the less valuable stations many minority broadcasters serve geographically limited markets with relatively small audiences."⁵ NCLR agrees with NAACP's observation: This is abysmal.

5. Despite the Commission's minority policies, minority ownership of mass media facilities has increased a paltry 1.8%, in the fifteen years since the Commission released the Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979, 42 Rad. Reg. 2d (P&F) 1689 (1978) ("1978 Policy Statement"). This slight increase in minority control demonstrates that the Commission's minority preferences, like its earlier attempts to increase diversity, have not reliably increased minority ownership of mass media facilities and diversity of voices in the

³ See FCC's Broadcast Station Totals as of January 31, 1993, released February 11, 1993.

⁴ See Minority Telecommunications Development Program ("MTDP") of the National Telecommunications and Information Administration ("NTIA"), reports in its Compilation By State of Minority-Owned Commercial Broadcasts Stations, 1992.

⁵ See Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997, 3003.

marketplace.

6. Since the Commission has proposed to license LMDS systems in two blocks of 1000 MHz each,⁶ it should seize this opportunity to realize its long floundering goal of ethnic diversity in mass media services, a goal endorsed by all three branches of the federal government, and set aside one block of LMDS frequencies for minority applicants only. Realizing ethnic diversity in the mass media marketplace is at least as compelling as the economic and competitive factors which justified a set aside in the cellular services.⁷

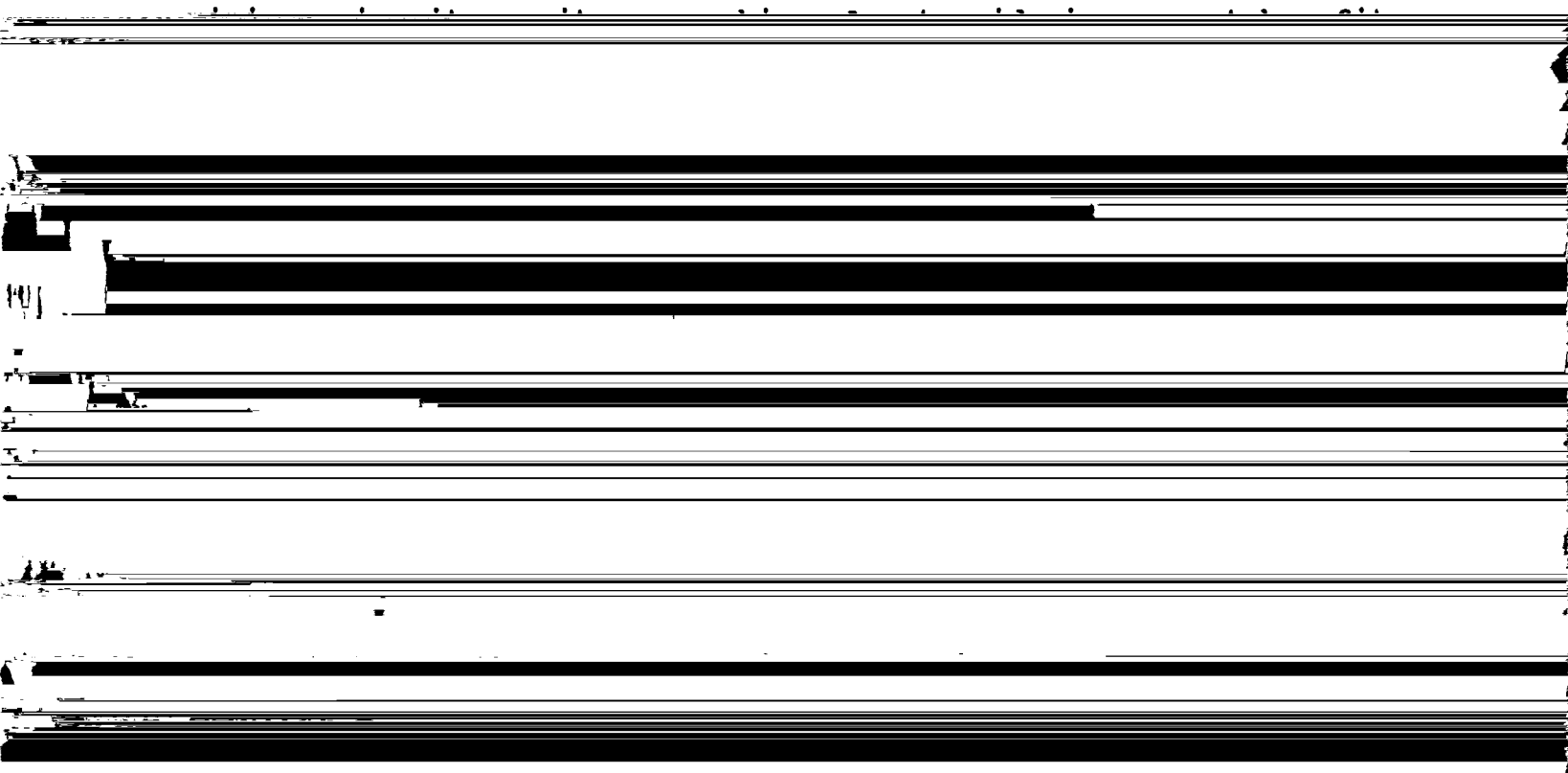
7. History demonstrates, however, that this set aside should be governed by safeguards designed to prevent speculative filings by entities purporting to qualify for the minority set aside, which are in fact driven by non-minorities.⁸ NCLR would suggest a very

⁶ See NPRM at 8.

⁷ See An Inquiry into the Use of the Bands 825-845 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 86 FCC 2d 469, 49 Rad. Reg. 2d (P&F) 809, 818 (1981).

⁸ The Commission is well versed in the abuses occasioned by the preferences granted in comparative proceedings in mass media. See Signal Ministries, Inc., 104 FCC 2d 1481 (Rev. Bd. 1986), rev. denied, 2 FCC Rcd 1259 (1987), aff'd by judgment sub nom Adelphi Broadcasting Corp. v. FCC, 838 F2d 571 (D.C. Cir. 1988); KIST Broadcasting Corp. v. FCC, 102 FCC 2d 288 (1988), aff'd per curiam sub nom United American Telecasters, Inc. v. FCC, 801 F2d 1436 (D.C. Cir. 1986), cert. denied 107 S.Ct. 2182 (1987); Henderson Broadcasting Co., 63 FCC 2d 419 (Rev. Bd. 1971). See also Cleveland Television Corp. v. FCC, 732 F2d 962 (D.C. Cir. 1984); Coast TV, 4 FCC Rcd 1786 (Rev. Bd. 1989); Metroplex Communications, Inc., 4 FCC Rcd 8149 (Rev. Bd. 1989); VOB, Inc., 5 FCC Rcd 5872 (Rev. Bd. 1990); Southeast Florida Broadcasting, FCC Rcd

narrow and simple definition of who qualifies as a minority for purposes of eligibility for the minority set aside. To qualify, an applicant must be minority controlled and substantial equity in the applicant must be minority owned. While two-tiered corporations or limited partnerships might be eligible for the set aside, the Commission should not only look for minority control, but should also set a benchmark of some minimum total equity which must be actually owned by minorities as a qualification for the set aside. Basing the qualifications on control and equity ownership will eliminate sham applications which shield non-minority ownership and actual control behind minority principals. Through lengthy and costly litigation, some minority applicants have been shown to be sham applications, actually driven by non-minorities purporting to be passive investors. The Commission can forstall similar abuses in LMDS by granting this set aside only to applicants which can demonstrate minority control and the required



8. NCLR supports the proposal to set aside one block of frequencies and further supports limitations on LMDS applications